HENRY MCMASTER
ATTORNEY GENERAL

February 24, 2010

R. Brent Thompkins, Esquire
Paul W. Dillingham, Esquire
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Post Office Box 790
Rock Hill, South Carolina 29731-6790

Dear Mr. Thompkins and Mr. Dillingham:

We understand you represent the City of Rock Hill (the "City") and wish to request an opinion on behalf of the City concerning the constitutionality of section 12-37-670 of the South Carolina Code (Supp. 2009).

Law/Analysis

As you mentioned in your letter, we issued an opinion in October of 2006 addressing the constitutionality of section 12-37-670. Op. S.C. Atty. Gen., October 27, 2006. At that time, this provision established general law stating that new structures shall be listed for taxation "on or before the first day of March next after they shall become subject to taxation." S.C. Code Ann. § 12-37-670. However, this statute, as amended in 2006, added a provision allowing counties to enact an ordinance requiring that new structures be listed by the "first day of the next month after a certificate of occupancy is issued for the structure." We were asked whether or not the amendment to section 12-37-670 allowing for the county option to list property earlier than the time frame established in the general provision violated the uniformity provision of the South Carolina Constitution. Op. S.C. Atty. Gen., October 27, 2006.

We examined the constitutionality of section 12-37-670 in light of three provisions in the South Carolina Constitution. Id. We determined that this statute did not violate article X, section 3, mandating statewide uniformity with regard to tax exemptions, because we did not believe that the optional provision in section 12-37-670 constituted an exemption. Moreover, we opined that section 12-37-670 did not violate article X, section 6 because this provision only requires uniformity within the jurisdiction of the body imposing the tax. Id. However, when we analyzed this provision in accordance with article X, section 1 of the South Carolina Constitution, requiring all property be uniformly assessed in the listed set of classifications, we found it to be unconstitutional. Id. We concluded as follows: "Per section 12-37-670, if one county opted for the alternative date to list new structures for taxation, property of the same class may be subject to tax in one county and not in another. In accordance with this scenario, we believe a court could find section 12-37-670 is of

questionable constitutionality due to the uniformity requirement contained in article X, section 1." Id.

We understand from your letter that the Legislature amended section 12-37-670 since the issuance of our opinion. In 2007, the Legislature rewrote this statute, which now reads as follows:

> (A) No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended.
>
> (B)(1) A county governing body by ordinance may provide that previously untaxed improvements to real property must be listed for taxation with the county assessor of the county in which it is located by the first day of the next calendar quarter after a certificate of occupancy is issued for the structure. A new structure must not be listed or assessed until it is completed and fit for the use for which it is intended, as evidenced by the issuance of the certificate of occupancy or the structure actually is occupied if no certificate is issued.
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> (2) When an ordinance allowed pursuant to this subsection is enacted, additional property tax attributable to improvements listed with the county assessor accrues beginning on the listing date and is due and payable when taxes are due on the property for that property tax year. This additional tax is due and payable without regard to any tax receipt issued for that parcel for the tax year that does not reflect the value of the improvements.
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> (3) If a county governing body elects by ordinance to impose the provisions of this subsection, this election also is binding on all municipalities within the county imposing ad valorem property taxes.

You now question whether the amendments to this provision change the conclusions reached in our 2006 opinion. We believe they do not. As you point out, section 12-37-670 no longer contains a specific provision stating the time frame in which new structures must be listed. Thus, you argue that a general provision does not exist. While the Legislature has not provided a specific time frame, from reading section 12-37-670, we gather that the Legislature intended for some general time frame to remain. Subsection (B)(1) states that counties "may provide" for an ordinance establishing the first day of the next calendar quarter as the list date, but does not indicate that such a provision is mandatory on all counties. Furthermore, subsection (B)(3) of 12-37-670 states "[i]f a county

governing body elects . . . to impose the provisions of this subsection . . . ." Thus, this provision also indicates a general alternative.

Similar to subsection (B)(1) in the previous version of section 12-37-670, subsection (B)(1) in the current version also provides an option to counties to require that new structures be listed "the first day of the next calendar quarter . . . ." While the former subsection (B)(1) allowed counties to mandate new structures be listed by "the first day of the next month" instead of the next quarter, we believe our analysis in the 2006 opinion remains applicable. Just as we explained in our 2006 opinion, if one county opts to pass an ordinance, property of the same class may be subject to tax in that county and not in another. Thus, a court could find that this provision violates the uniformity requirement in article X, section 1.

In your letter, you argue that contrary to our 2006 opinion, you do not believe that article X, section 1 requires statewide uniformity with regard to the listing of new structures. In support of your position you cite to Beaufort County v. State, 353 S.C. 240, 577 S.E.2d 457 (2003). In this case, the Supreme Court addressed whether a statute requiring that time shares be valued in a particular manner violates article X, section 1. Id. Beaufort County argued that the statute violated article X, section 1 because "the Legislature cannot require a local assessor to value similar property differently . . . ." Id. at 243, 577 S.E.2d at 459. However, the Court interpreted article X, section 1 as follows:

> Section 1 does not prohibit the Legislature from requiring different types of real property be valued the same. Instead, it requires each category of property enumerated retain the same assessment ratio as other property within its class. In other words, the South Carolina Constitution requires that an assessment ratio be applied to eight distinct classes of property, and that this assessment ratio must be uniform and equal to property within each class. The methodology to determine the value of the property remains a matter for the General Assembly.

Id. at 244, 577 S.E.2d at 460.

The Court in Beaufort County made clear that the Legislature maintains the authority to value property within each class. However, the question here is whether or not the Legislature can give counties the authority to choose when a piece of property within a certain class will be subject to tax, not whether the Legislature can specify how a particular type of property within a classification must be valued. Thus, we do not believe that the Court's decision in Beaufort County addresses the issue at hand. Section 1 states that "[t]he assessment of all property shall be equal and uniform in the following classifications . . . ." We do not believe property will be assessed on an equal and uniform basis if one piece of property is subject to tax in one county, while another piece of property of the same classification under article X, section 1 is not taxed in another county.

In your letter, you also argue that if sections 1 and 6 of article X be read together, article X, section 1 does not require political subdivisions to list new property for taxation uniformly statewide. As you stated in your letter, article X, section 6 allows the Legislature to vest the authority to assess and collect taxes with political subdivisions so long as those tax levies are uniform within the jurisdiction of that political subdivision. You assert that "[i]n construing section 1 in light of section 6, section 1 seems only to require that the assessment ratios provided therein must be applied uniform and equally throughout the state." Therefore, you conclude that "article X, section 1 does not require political subdivisions to list new property for taxation uniformly statewide." We disagree.

In our 2006 opinion, we concluded the prior version of section 12-37-670 did not violate article X, section 6 because article X, section 6 only requires uniformity within the County. However, article X, section 6 and article X, section 1 are two separate provisions requiring uniformity of taxation in two different applications of taxation. Furthermore, we do not believe the unconstitutionality of a statute under one of these provisions can be remedied by another provision.

Conclusion

We maintain our belief that article X, section 1 of the South Carolina Constitution requires uniformity with regard to when property is subject to taxation. Therefore, although the Legislature amended section 12-37-670 in 2007, because this statute continues to provide counties with the ability to elect an alternative date to begin taxing new structures, we are of the opinion that a court could find this provision unconstitutional. However, as we noted in our previous opinion, only a court may ultimately declare a statute unconstitutional. Op. S.C. Atty. Gen., October 27, 2006. Therefore, unless or until a court makes this ruling, section 12-37-670 remains valid and enforceable.

Very truly yours,

Henry McMaster
Attorney General

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REVIEWED AND APPROVED BY:

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